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August 11, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Wolf

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Serial No. 76590632

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Elliott N. Kramsky for Dane Wolf.

Matthew Pappas, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

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Before Quinn, Hairston and Zervas, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On May 3, 2004, Dane Wolf filed an application to register on the Principal Register the mark PURSE PAL (in standard character form) for goods ultimately identified as "portable, battery operated multipurpose utility light having a plastic case for personal uses including attachment to and illumination of the interior of a purse"

in International Class 11.[1] Applicant has disclaimed the word PURSE.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the previously registered mark PURSEPAL (in typed or standard character form) for "[p]urse-holder, namely, a metal hook used to hold a purse or a handbag to a table" in International Class 6.[2]

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs.

Our determination of the examining attorney's refusal to register the mark under Section 2(d) of the Trademark Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544

[1] Application Serial No. 76590632, claims a bona fide intent to use the mark in commerce under Trademark Act 1(b), 15 U.S.C. § 1051(b).

[2] Registration No. 2644323, issued October 29, 2002.

F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The marks involved in this appeal are essentially identical, differing only by the addition of a space between the words PURSE and PAL in applicant's mark. The presence or absence of a space between identical words does not significantly change the appearance of the marks. *Stockpot, Inc. v. Stock Pot Restaurant, Inc.*, 220 USPQ 52, 54 (TTAB 1983), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) ("There is no question that the marks of the parties [STOCKPOT and STOCK POT] are confusingly similar. The word marks are phonetically identical and visually almost identical."); *In re Best Western Family Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) ("There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical."). Applicant has conceded that the "mark of the Applicant is undeniably phonetically-identical to that of the cited registration"; and has stated that the first *du Pont* factor "is therefore admittedly satisfied." Brief at p. 3. Thus, we find that the first *du Pont* factor involving the similarities of the marks weighs heavily against applicant.

Applicant argues that "the phonetic identity of the marks at issue is mitigated by the fact that each is weak. The first portion of the composite word mark 'PURSE' is clearly descriptive with regard to the goods of each party." Applicant cites to a definition of "pal" in *Merriam Webster's Collegiate Dictionary* (10th Ed.) as "one that accompanies another; also one that keeps company with another," which definition is not in the record.[3] According to applicant, "the composite word mark suggests goods that are utilized in connection or combination with a purse."

In support of his argument, applicant relies on a three-page listing of registrations and applications, both subsisting and cancelled, for marks including the term PAL (but not including the term PURSE), which were submitted with his response to the first Office action. Because the examining attorney has not advised applicant that the listing is insufficient to make the registrations of record, the examining attorney is deemed to have stipulated the registrations into the record. The Board, however, does not consider more than the information provided by

[3] We take judicial notice of the definition of "pal" in *Webster's Third New International Dictionary of the English Language* Unabridged (1993), i.e., partner: as **a:** ACCOMPLICE[,] **b.** a close friend or boon companion." The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

applicant. Because the listing of registrations provided by applicant does not include the goods or services which are the subject of each registration, the listing of registrations has very limited probative value. See TBMP § 1208.02 (2d ed. rev. 2004) and cases cited therein. As for the applications, they have no probative value because applications are only evidence that an applicant has filed for registration of a mark. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047 (TTAB 2002).

Applicant, in support of his argument that registrant's mark is weak, also cites to (a) Registration No. 2113832 for WILDKIN PURSE PALS and design, which Office records show was cancelled on August 21, 2004; (b) cancelled Registration No. 1547029 for PURSE PALS and design; (c) application Serial No. 78416977 (stylized) for PURSE PALS; and (d) abandoned application Serial No. 74034834 for PURSE PALS.[4] We do not further consider the cancelled registrations - cancelled registrations are not evidence of anything except that they issued. Also, we do

[4] Applicant first referred to these registrations and applications in his May 24, 3005 response, and has not submitted a copy of the USPTO paper or electronic record. The examining attorney has not objected to the fact that applicant has not submitted evidence of the existence of these registrations and applications. Accordingly, we consider the registrations and applications to have been stipulated into the record. See TBMP § 1208.04 (2d ed. rev. 2004).

not further consider the applications because, as explained in the preceding paragraph, they have no probative value.

Applicant also submitted an email received from "eBay Member: leosasha@aol.com" stating "I saw this on eBay and thought you might be interested." The email includes a "product advertisement that appeared on web site ebay.com on June 8, 2005" and bears the caption "NWT Curious George Pursepal & Wastebasket." Evidently, the product being advertised is a stuffed animal which has a "small zipper opening at top (on his back) [and can] hold 2-3 small toys. Velcro on hands. Has brown strap handles." Inasmuch as the item depicted in this email is a stuffed animal in the form of a monkey, in the nature of a toy for a small child, and is not identified as a purse of any kind, it is of extremely limited probative value.

Because there is little, if any, evidence in support of applicant's contention that "the marks at issue … [are] weak," we accord registrant's mark the normal scope of protection otherwise afforded to registered marks. Also, even if the mark is weak, we note too, as did the examining attorney, that weak marks are entitled to protection against registration by a subsequent applicant of the same or similar mark for the same or closely related goods or services. *King Candy Co. v. Eunice King's Kitchen, Inc.*,

496 F.2d 1400, 182 USPQ 108 (CCPA 1974); *In re Colonial Stores*, 216 USPQ 793 (TTAB 1982).

We next consider the similarities and dissimilarities between applicant's and registrant's goods.[5] Applicant maintains that the goods of the registration are "inherently entirely unrelated to those of the Applicant … absent a common vague relationship to use in conjunction with a purse." Brief at p. 6. We disagree. Applicant's lights and registrant's hooks are both novelty-type items which may be used at the same time in connection with the same purse. They may be purchased at the same locations in the same retail stores, and, of course, in view applicant's evidence of record, on the Internet. Further, they are both low cost items which are subject to purchase on impulse.[6] Also, it is well established that in cases where the marks are nearly identical, the relationship between the goods on which the parties use their marks need not be as great or as close as in the situation where the marks

[5] Applicant's arguments that the goods "are both functionally and physically entirely dissimilar"; and that "the two products require different manufacturing processes, expertise and materials (plastic case v. metal hook) and that such diverse capabilities are uncharacteristic of the small producers that inhabit the realm of novelties," are not persuasive.

[6] The printout from www.Shopintuition.com submitted by applicant with his May 24, 2005 response shows that applicant's light may be purchased for $20.00 and the printout from www.ebay.com shows that registrant's hook may be purchased for $29.99.

are identical or strikingly similar. See *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981). See also *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ("[E]ven when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source.").[7] We therefore find the goods are similar.

In view of the foregoing, we find that applicant's mark PURSE PAL for "portable, battery operated multipurpose utility light having a plastic case for personal uses including attachment to and illumination of the interior of a purse" is likely to cause source confusion among purchasers with the nearly identical registered mark PURSEPAL for "purse-holder, namely, a metal hook used to hold a purse or a handbag to a table."

Decision: The refusal to register under Section 2(d) is affirmed.

[7] The examining attorney, with his final Office action, submitted printouts from three websites, showing "that applicant's and registrant's goods are the type of goods often sold together by the same company and encountered by the same classes of purchasers." Final Office action at p. 2. For example, key chains, mirrors and compacts are depicted on the same web page in www.thingsremembered.com; wallets, sunglasses, key chains and cosmetic accessories are depicted on the same web page in www.branders.com; and zipper pulls, flashlights and key chains are depicted on the same web page in www.rightsleeve.com. None of the webpages that the examining attorney relies upon depict lights or hooks. Hence, the probative value of the examining attorney's evidence is extremely limited.